

STATE OF MICHIGAN  
COURT OF APPEALS

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RAYMOND C. ATWOOD, IV,

Plaintiff-Appellant,

v

CON WAY FREIGHT INCORPORATED and  
INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA,

Defendants-Appellees.

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UNPUBLISHED

January 20, 2015

No. 318556

MCAC

LC No. 12-000085

Before: TALBOT, C.J., and CAVANAGH and M. J. KELLY, JJ.

M. J. KELLY, J. (*dissenting*).

I must respectfully dissent. Assuming that the Michigan Compensation Appellate Commission properly interpreted and applied this Court's decision in *Ledbetter v Mich Carton Co*, 74 Mich App 330; 253 NW2d 753 (1977), I nevertheless conclude that the Commission erred when it determined that the slip and fall at issue here had nothing to do with the condition of the bathroom.

The magistrate in this case found plaintiff, Raymond C. Atwood, IV, to be a credible witness and accepted his version of events. Atwood testified that he lost his balance after he proceeded into the bathroom at work. He candidly admitted that he did not know with certainty what caused him initially to lose his balance, but he related that he would not have fallen were it not for water on the countertop. He testified that he was "off balance" and reached out to get support on the marble countertop, but his "hand slipped out" because there was "water . . . on the marble sink and thus I couldn't grab a hold, my hand slipped out from the water that was on the sink." Two witnesses who arrived shortly after Atwood's fall stated that they did not see anything on the *floor* that might have caused Atwood's fall, but neither witness contradicted Atwood's description of the sink and countertop. Consequently, there was no evidence to support the Commission's finding that Atwood's fall was idiopathic and unrelated to the condition of the bathroom. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000). The undisputed evidence established that Atwood would not have fallen and injured himself had it not been for the water on the countertop and sink.

I would reverse.

/s/ Michael J. Kelly